

But, if the real estate set apart by the testator for the payment of his debts be insufficient, or be given in such a manner as to be ineffectual, then it will be considered as coming within the meaning of this statute, and be deemed void. Otherwise the creditors must take that real estate of the deceased debtor which he has devised for their benefit, and none other. (*q*)

Here it is alleged and admitted, that the whole of the personalty, together with the real estate, devised by this testator to be sold for the payment of his debts, is wholly inadequate for that purpose. There being, then, an admitted deficiency of the devise for the payment of debts, it falls within the operation of the statute, and must be deemed, as against creditors, absolutely null and void. The case being thus cleared of all embarrassment by reason of that devise, it follows that the real estate of this deceased debtor must be dealt with, in all respects, as if he had made no provision whatever for the payment of his debts, since an inadequate or ineffectual provision is as if none had been made.

But, in behalf of the infants, their guardian objects, that the before mentioned private act of assembly has prescribed a mode whereby the debts of their ancestor are to be satisfied from the estate devised to them; and, therefore, that these creditors cannot be permitted to obtain satisfaction in any other manner.

This objection seems to have been thrown into the answer of these infants, rather by way of an appeal to the indulgence of the court, than with any great degree of confidence in its validity as a bar to the relief claimed by the bill. But when it is recollected how many private acts of this description the general assembly have passed, and how often they have been tempted or urged, by generous feelings or by considerations of the difficulty and hardships of the case, by such enactments, apparently to step beyond the limits assigned to them by the constitution, or to trench upon the confines of the judiciary, it may be well to investigate this matter somewhat more attentively than might otherwise be deemed necessary.

This mode of granting relief in particular and anomalous cases by legislative enactments, is said to have prevailed in England as far back as the beginning of the fifteenth century. (*r*) But even in the earliest times, and always since, when the matter was of such

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(*q*) *Hughes v. Doulsen*, 2 Bro. C. C. 614.; S. C. 2 Cox, 170; *Bootle v. Blundell*, 19 Ves. 528; *Ashby v. Palmer*, 1 Meriv. 296; *Pow. Mort. by Coven*, 69, 325.—

(*r*) *Hallam Mid. Ages*, vol. 2, c. 8, pt. 3, page 134.